

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

PROVIDENCE EVERETT MEDICAL CENTER

Employer

and

Case 19-RC-14157

INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and part-time security officers, lead officers, and security technicians employed by the Employer at its Colby and Pacific facilities in Everett, Washington, and at its facility in Mill Creek, Washington; but excluding all office clerical employees, supervisors as defined by the Act, and all other employees.

The Employer is engaged in the operation of two acute care hospitals in Everett, Washington, and a medical clinic in Mill Creek, Washington. Petitioner seeks a unit of all security guards employed at all three facilities. The Employer contends that the appropriate unit

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<sup>1</sup> The parties filed briefs, which have been considered.

includes only the two hospital facilities, and further that leads are statutory supervisors. In addition, Petitioner contends that the security technician is not a guard within the meaning of the Act.

The Employer's main facility is the Colby facility, at 1321 Colby Avenue in Everett. It is a hospital and medical office building, and the Employer's administrative functions are located there. The Pacific facility is also a hospital, and is located about one mile from Colby. Mill Creek is an outpatient facility and is about 20 minutes by road from either Colby or Pacific.

Richard Case is the Employer's manager of safety and security, and has ultimate authority over, inter alia, all security guards at all three facilities. Reporting to Case is the security supervisor, who also has authority over the guards at all three facilities. The security supervisor position is currently occupied on an interim basis by James Wood. Both Case and Wood are located at Colby. The leads at issue herein report to Wood, and are located at Colby and Pacific. There is no lead at Mill Creek, where the guards report to the facility manager, DeeAnn Meling.

### **Facility Issue.**

Petitioner seeks a unit including the guards employed at all three of the Employer's facilities, while the Employer contends that the appropriate unit excludes guards employed at Mill Creek. There are approximately 23 guards altogether; two are employed at Mill Creek.

The guards at Colby and Pacific escort patients and/or guests as needed. They do "patient stand-bys"<sup>2</sup> as needed in the emergency room. They patrol the facility, both inside and outside, and are responsible for parking enforcement. They are required to log any incidents or potential problems, and also to write reports of incidents. The guards at Colby and Pacific are full-time employees. The guards at Mill Creek greet people at the front reception desk, and patrol the parking lot and interior of the building. There is no emergency room at Mill Creek. Mill Creek guards work seven tenths of full-time. Guards at Colby and Pacific carry pagers, cell phones, and two-way radios. Guards at Mill Creek do not carry two-way radios.

The guards at Colby and Pacific work 12-hour shifts, both days and nights. Guards at Mill Creek work only days. Personnel files for the guards at all three facilities are kept in the human resources office at Colby, and the human resources department determines the rate of pay for all three facilities. Mill Creek guards are paid the same rates as the guards at the other two facilities, and wear the same uniforms. No patrols travel from one facility to another. If a Mill Creek guard is absent, a fill-in is supplied from the on-call list. The same list is used for all three facilities, and apparently includes guards who normally work at Colby and Pacific, although there are four on-call guards.<sup>3</sup> A guard employed at Colby testified that he worked on one occasion on 2001 at Mill Creek for an absentee. Two guards formerly employed at Mill Creek are currently employed at Colby, but they were not transferred; instead, they had to apply for the positions and be interviewed on the same basis as other candidates.

The evidence is in conflict with respect to who has final authority to hire the Mill Creek guards. The human resources manager, Andrea Barton, testified that Case makes the final decision, and that Meling actively participates in the hiring process. Case testified that he interviews candidates, along with the security supervisor, and makes a recommendation to

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<sup>2</sup> Undefined in the record.

<sup>3</sup> The record is unclear as to who is included on the on-call list.

Meling, who makes the final decision. The security supervisor occasionally visits the Mill Creek facility, and regularly spends about 20 minutes per day talking to the Mill Creek guards by telephone.

An employer-wide unit is presumptively appropriate, as it is one of the units listed in the Act as appropriate for bargaining. Accordingly, where the presumption has not been rebutted, the Board will grant the broader unit requested by the petitioning labor organization. *Jackson's Liquors*, 208 NLRB 807 (1974); *Beaumont Forging Company*, 110 NLRB 2200 (1954).

Here, the Mill Creek guards share some degree of supervision with the Colby and Pacific guards; share the same rate of pay, which is centrally determined by the Employer's human resources department; wear the same uniforms and perform duties similar to those of the guards at Colby and Pacific. There is some degree of interchange, in that guards normally employed at Colby or Pacific may be called upon to work a shift at Mill Creek to fill in for an absentee; there is a common on-call list. Moreover, no labor organization is seeking to represent the Mill Creek employees separately, nor is any labor organization seeking to represent only the Colby and Pacific employees. Accordingly, I conclude that the presumption that the Employer-wide unit is appropriate has not been rebutted here.

#### **Supervisory Issue.**

There is one day shift lead and two night shift leads at Colby. One night shift works the first half of each week, and consists of three guards, including the lead. The record is silent regarding other night shifts at Colby. At Colby, a total of eight or nine guards work on night shift, and about six on days. There are four guards at Pacific, but no leads there or at Mill Creek.

The day shift lead currently is Jack Overton. Prior to the time he became a lead, Overton was responsible for scheduling all the guards, and he continues to do that as lead. Robert Tuan and Mike Manderino are night shift leads. The night shift lead position has existed since about March 2000. At that time, John Dennis was the security supervisor, and James Wood and Robert Tuan were chosen to be the night leads. At the initiation of the position, Dennis told Wood and Tuan that they were to be sergeants and would be responsible for the actions of the other guards on their shifts, including the reports generated by those guards. They were to report to the supervisor anything that they couldn't handle themselves. The security supervisor carries a pager 24 hours a day.

Robert Tuan is the night shift lead on the shift that works the first half of each week. There are two other guards on duty with him. They carry two-way radios. They may be summoned by radio by the nursing staff to stand by in the emergency room or to assist with some other incident. The guard who answers the call first, takes it. Otherwise, the guards patrol the interior and the exterior of the building; they do not have assigned routes but decide on their own where they will patrol. There is one stationary post at the front door to screen incoming visitors; the three guards by consensus rotate at that post every two hours. Each guard keeps his own activity log and writes his own incident reports. Although it is Tuan's responsibility to see that the other two guards complete their reports and logs, he is not the last night shift guard to leave and is unable to review their work before he goes home for the day.

Tuan sends e-mail messages to Case and Wood regarding the performance of the guards on his shift as to whether a guard performed particularly well or did something wrong. There is no specific evidence that Tuan ever recommends either reward or discipline, or that if he does, such recommendations are carried out without any independent investigation by superiors. The

guards on his shift sometimes come to Tuan with small problems, which he solves for them if he can. Tuan is paid an additional \$1.25 per hour as lead.

Lead officers can call in a guard to work a shift for an absentee, even if the guard called in will be working overtime at time and a half pay, as it is the Employer's policy that a certain number of guards be present on shift. In the past, prior to March 2000, Wood as a rank-and-file guard on duty, had sometimes called another guard to come in to work at an overtime rate.

The Employer's human resources director, Andrea Barton, testified that the leads have to decide what to do in emergency situations, such as when there is a person who is out of control, or a problem in the emergency room. She did not say specifically what sorts of decisions the leads might be making in those situations. She said that the leads can reassign other guards in cases of emergency, but she did not testify as to any specific details, and I note that other witnesses testified that the guards were not given specific assignments by the leads. I note also that there is no evidence establishing that Barton has any direct knowledge of the leads' performance of their duties.

There is testimony that hypothetically if a decision had to be made delegating which guard was to go where, the lead would make the decision, but that in practice all the guards hear the same calls over the radio and they respond independently. There is no specific evidence of any situation ever having arisen in which a lead was required to decide which guard would respond. Employer witnesses testified that leads are responsible for what happens on their shifts, but there is no specific evidence with respect to the manner in which the leads are held accountable. Further, there is no specific evidence that leads are required to exercise any discretion in carrying out their responsibilities. The record includes an e-mail exchange in which Tuan reports that the housekeeping staff has reported to him some occurrences of after hours intruders and vandalism in the medical office building at Colby, and *Wood* responds with instructions to sweep the building floor-by-floor several times a night, using all three guards on duty, two in the stairwells and one on the floors.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well-established that the possession of any one of the authorities specified in Section 2(11) is sufficient to place an employee in the supervisory class. However, "the legislative history of Section 2(11) indicates that Congress intentionally distinguished between 'straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire, or fire, discipline, or make effective recommendations with respect to such actions.' Thus, a 'leadman' or 'straw boss' may give 'minor orders to directives or supervise the work of others, but he is not necessarily a part of management and a 'supervisor' within the Act.'" *George C. Foss Company*, 270 NLRB 232 (1984).

The burden of proving statutory supervisory status falls upon the party asserting such status. *Kentucky River Community Care*, 532 U.S. \_\_\_\_ (2001). Absent detailed, specific

evidence of independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991); *Quadrex Environmental Company, Inc.*, 308 NLRB 101 (1992).

The Employer contends that the leads assign and direct work, and that they recommend discipline and rewards. In support of its contentions, the Employer relies heavily on *NLRB v. Quinnipiac College*, 256 F.3d 68 (2<sup>nd</sup> Cir., 2001).

The instant matter is readily distinguishable from *Quinnipiac College*. In that case, there was evidence that the shift supervisors at issue might, on occasion, “reassign or redeploy other security department employees, taking into consideration the employees’ experience and capability to respond to a particular incident, as well as other campus security needs and requirements.” 256 F.3d at 75. In addition, there was specific evidence in *Quinnipiac* that the shift supervisors at issue were disciplined or threatened with discipline because of the actions of their subordinates. There was also specific evidence in that case that the shift supervisors, in emergency situations, directed other security employees to take such actions as evacuating buildings, searching students’ rooms, contacting outside assistance, and deploying additional security personnel.

In contrast, in the instant case, there is no specific evidence regarding any decision a lead might make to “reassign” employees, including no evidence as to the circumstances which might require such reassignment or the basis for any decision the lead might make in that regard. Indeed, here, the leads at issue, particularly the night shift leads, have only two employees in addition to themselves to choose from in any given situation. Moreover, the employees themselves independently respond to radio calls and there is no evidence that any lead has ever countermanded that choice by a guard. In fact, it would appear desirable to have all hands on scene for any of the types “respond” calls demonstrated in the record. Further, while leads have been told they are responsible for what happens on their shifts, there is no specific evidence with respect to any accountability to which the leads are held, and no evidence that any lead has been disciplined or threatened with discipline for the actions of any guard on his shift. Nor is there any specific evidence regarding any directions given by any leads to any guards. The Employer offered only vague, conclusionary testimony with respect to the leads’ authority to assign and direct the guards. Further, the e-mail exchange regarding intruders and vandalism in the medical office building suggests that the security supervisor plays an active role in deciding how non-routine situations are to be handled.

In *Quinnipiac College* there was evidence that the shift supervisors at issue advised their superiors regarding misconduct of employees, and made recommendations that the offending employee be disciplined. Here, while there is evidence that leads report to the security supervisors occasions on which a guard performed very well, or did not perform well, there is no evidence that the leads make any recommendations for further action, or that the security supervisor or the security manager have ever taken any action to reward or discipline an employee based on a recommendation by a lead.

Day shift lead Overton schedules the guards, but clearly this is a routine function which Overton performed before he became a lead, there is no hint of a need for something beyond routine or clerical-type decision making. Leads solve minor problems brought to them by employees, but there are no specific examples of such problem solving<sup>4</sup> in the record and no

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<sup>4</sup> Is the problem something like “I’m being harassed because of my race”, or more like “please cover me at the front entrance while I use the restroom”?

evidence that it rises to the level of grievance handling in the statutory sense. A lead can call in a guard to work to fill in for an absentee, even if the guard called in will be working on overtime, but there is no evidence the lead is required to use any non routine, non-clerical judgment in this regard: The staffing level is fixed, and for all the record shows, the lead runs down the on-call list until he finds a body. The Board has found that when the assignment of overtime is due to the necessity of replacing an absent employee, supervisory status is not thus conferred. There is no “judgment” included, just the application of a routine procedure. *Chevron Shipping Co.*, 317 NLRB 379 (1995). Alternatively, to the extent decision-making/judgment is involved, it involves a routine or clerical-type process.

I conclude that the Employer has failed its burden in establishing that the leads are statutory supervisors, and that, on this record, they are not supervisors within the meaning of the Act.

### **Security Technician.**

Joseph Fischer has been the security technician for about four and one-half years. He is responsible for overseeing the functioning of all electronic security systems, access control systems, alarms, and cameras. (The cameras are not monitored; they merely record for possible future retrieval.) He also responds to incidents in the same way that other guards do. He works at Colby in the photo ID office next to the security supervisor’s office. He reports to the security supervisor.

He does not patrol the facility. Sometimes he is called by radio by another guard to go to their location to provide backup. He wears the same uniform as other guards wear, but not every day. He can decide for himself which days to wear his uniform, and generally wears it one to four days a week. When he wears a uniform, he carries the same gear, such as flashlight and radio, as other guards. He spends about 30 percent of his time responding with the day shift guard or writing incident reports.

His normal daily assignment is issuing visitor passes during the day, and making ID badges for hospital employees. Another guard assists him in his office making ID badges; they make about 400 to 450 badges a month. In addition, he reviews surveillance tapes after an incident has occurred. He is responsible for investigations of computer systems around the hospital for various violations, including pornography. He can activate and deactivate all of the Employer’s security devices.

Section 9(b)(3) of the Act defines a “guard” as a person “employed ... to enforce against employees or other persons rules to protect the property of the employer or to protect the safety of persons on the employer’s premises.” Petitioner contends that the security technician is not a guard within that definition. In this regard, Petitioner cites *Hoffman Security*, 302 NLRB 922 (1991) in which the Board found that receptionists who performed guard-like duties incidental to their receptionist functions were not guards within the meaning of the Act. In *Hoffman*, the receptionists performed typical receptionist duties, and in addition monitored a closed-circuit television, a guard-like function, but their primary purpose in doing so was merely to observe who entered the premises. In contrast, the security technician here performs actual guard functions about 30 percent of his time, and such duties are more than merely “incidental” to other duties he may have.

Petitioner further argues that the technical “systems” aspects of the security technician’s job are not statutory guard duties, citing *American District Telegraph Co.*, 83 NLRB 517 (1949);

83 NLRB 1139 (1949); and 160 NLRB 1130 (1966), three cases involving an employer which operated a company that provided security alarms and other security devices to other companies. In the first of the *American District Telegraph* cases, employees who were primarily electricians and electrical maintenance men, and who were engaged primarily in installing and maintaining the electrical devices which initiated alarms received by the employer's guard stations, were found not to be guards within the meaning of Section 9(b)(3). A similar finding was made in the second and third cases.

The security technician herein maintains the electronic equipment used by the Employer to protect its premises, similar to the duties of the employees in *American District Telegraph*, but he also performs some guard-like functions, such as the reviewing of surveillance tapes, and enforcing the Employer's rules regarding computer usage. But regardless of whether these functions are guard functions, he spends about 30 percent of his time performing the same duties as other guards; i.e., responding to incidents and writing incident reports, and he wears the same uniform as the other guards 20 percent or more of the time. In *Reynolds Metals Company*, 198 NLRB 120 (1972), the Board found firemen who spent 25 percent of their time performing guard duties to be guards within the meaning of the Act. Accordingly, I conclude that the security technician herein is a guard within the meaning of Section 9(b)(3) and is included in the unit.

There are approximately 23 employees in the Unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONS OF AMERICA (SPFPA).

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before December 6, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 13, 2001.

**DATED** at Seattle, Washington, this 29<sup>th</sup> day of November 2001.

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